

**DISTRICT OF COLUMBIA  
OFFICE OF ADMINISTRATIVE HEARINGS**

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in Section 8 of the Office of Administrative Hearings Establishment Act of 2001 (the "Act") (D.C. Law 14-76; D.C. Official Code § 2-1831.05(a)(7)), gives notice of his intent to adopt, on an emergency basis, the following amendment to add Chapter 28 to Title 1 of the District of Columbia Municipal Regulations (DCMR). These emergency rules prescribe the rules of practice and procedure in matters before OAH. Adoption of these rules on an emergency basis will ensure that there will be published rules of practice and procedure in effect for the new OAH at the time it is scheduled to begin operations on March 22, 2004. Therefore, adoption of these rules on an emergency basis is necessary to protect public health, safety and welfare. These emergency rules were adopted on February 25, 2004, and became effective on that date.

The Chief Administrative Law Judge also gives notice of his intent to take final rulemaking action to adopt the amendment adding a new Chapter 28 to Title 1 DCMR in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* in accordance with § 6(a) of the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-505(a).

These emergency rules will expire on June 23, 2004, 120 days after their adoption, or upon publication of a notice of final rulemaking in the *D.C. Register*, whichever occurs first.

Title 1 DCMR is amended by adding a new Chapter 28 to read as follows:

## **CHAPTER 28**

### **OFFICE OF ADMINISTRATIVE HEARINGS RULES OF PRACTICE AND PROCEDURE**

#### **Rules**

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**2800 SCOPE OF CHAPTER**

- 2800.1 These Rules (Chapters 28 and 29 of Title 1) shall govern the procedure in all cases brought before this administrative court.
- 2800.2 These Rules shall not be construed to extend or limit the jurisdiction of this administrative court.
- 2800.3 These Rules shall be construed and administered to secure the just, speedy and inexpensive determination of every case.
- 2800.4 No Administrative Law Judge shall maintain standing, chamber or other individual rules. Nothing in this Section, however, shall be construed to limit the authority of the Chief Administrative Law Judge to approve the use of forms, documents and practices not inconsistent with these Rules that shall assist in managing cases coming before this administrative court, nor the authority of an Administrative Law Judge to issue any lawful order for purposes of case management or other matters in a particular case.

**2801 APPLICABILITY OF DISTRICT OF COLUMBIA SUPERIOR COURT RULES OF CIVIL PROCEDURE**

- 2801.1 Where indicated, these Rules may incorporate by reference specified District of Columbia Superior Court Rules of Civil Procedure. When used in a Superior Court rule incorporated by reference, the following terms shall have the following meanings:
- (a) “Court” shall mean the District of Columbia Office of Administrative Hearings;
  - (b) “Judgment” shall mean “Order.”
- 2801.2 Where a procedural issue coming before this administrative court is not specifically addressed in these Rules, this administrative court may rely upon the District of Columbia Superior Court Rules of Civil Procedure as persuasive authority.

**2802 COMMENCEMENT OF ACTION IN OAH**

- 2802.1 Unless otherwise provided by statute or these Rules, cases, other than those commenced by a Notice of Appeal as set forth in Chapter 29 of Title 1, are commenced by either the filing of a Notice of Infraction, Notice of Violation or a request for a hearing as authorized by applicable law.

**2803 COMMENCEMENT BY NOTICE OF INFRACTION**

- 2803.1 When the Government commences a case by filing a Notice of Infraction, the Government shall also file and serve upon all other parties, in the

manner consistent with applicable law and with the requirements of due process, a copy of all exhibits it intends to offer in prosecuting the case, unless, with leave of this administrative court and for good cause shown, such exhibits could not have been so filed and served.

2803.2 In lieu of submitting exhibits as specified in this Rule, the Government may submit a statement that no exhibits shall be offered in prosecuting the case.

2803.3 A Notice of Infraction that fails to comply with the requirements of applicable law and these Rules may be rejected for filing and/or dismissed.

#### **2804 COMMENCEMENT BY NOTICE OF VIOLATION**

2804.1 When the Government commences a case by filing a Notice of Violation, the Government shall also file and serve upon all other parties, in the manner consistent with applicable law and with the requirements of due process, a copy of all exhibits it intends to offer in prosecuting the case, unless, with leave of this administrative court and for good cause shown, such exhibits could not have been so filed and served.

2804.2 In lieu of submitting exhibits as specified in this Rule, the Government may submit a statement that no exhibits shall be offered in prosecuting the case.

2804.3 A Notice of Violation that fails to comply with the requirements of applicable law and these Rules may be rejected for filing and/or dismissed.

#### **2805 COMMENCEMENT BY REQUEST FOR HEARING**

2805.1 Unless otherwise required by statute or these Rules, to commence a case by a request for a hearing, a written request filed in this administrative court is required.

2805.2 While a request for a hearing need not follow a specific format, it shall contain a short, plain and reasonably comprehensible statement that the party requests a hearing, and a summary description of the nature of the dispute, and the relief sought, including, where applicable, the benefit amount or sum certain being sought.

2805.3 Where authorized by law, oral requests to another government agency for a hearing must be reduced to writing and filed with this administrative court by the government agency receiving such a lawfully authorized oral request within three (3) business days of the request. A failure to comply with this Rule shall place the government agency in default, whereupon the agency shall be required to show good cause within five (5) business days after service of the default notice why a final order shall not be entered in favor of the party making the oral hearing request.

2805.4 The Clerk's office shall make reasonably available a form approved by the Chief Administrative Law Judge for use in requesting a hearing.

**2806 CASE TRACKING**

2806.1 At the time any matter before this administrative court is commenced, the Clerk shall assign the case to a Standard or Complex case track for management and disposition. These tracks are defined as follows:

(a) Standard Cases include all matters arising from the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18) and lawfully committed to the jurisdiction of this administrative court. Standard Cases shall also include, but not be limited to, the following cases:

- (1) D.C. Department of Employment Services matters;
- (2) D.C. Department of Human Services matters;
- (3) D.C. Taxicab Commission matters;
- (4) Board of Appeal and Review Cases, excluding Certificate of Need and Notice of Program Reimbursement determinations; and
- (5) Matters arising under D.C. Official Code Title 8, Chapter 8.

(b) Complex Cases include those matters not designated as Standard Cases under this Section.

2806.2 A party in a Standard Case track may, within thirty (30) days of the commencement of a case and prior to trial, file a motion in accordance with Rule 2812 to change to a Complex Case track. The presiding Administrative Law Judge also may change a Standard Case to a Complex Case upon his or her own motion. In deciding whether to designate a case as a Complex Case under this Section, the presiding Administrative Law Judge shall consider the number of parties, the relief requested, the number and difficulty of the legal and factual issues, the anticipated number of witnesses and exhibits, the anticipated length of the trial, and any other factor that, in his or her discretion, indicates that the fair, just and prompt disposition of the case will or will not be enhanced by use of the procedures available in Complex Cases.

2806.3 This Rule does not apply to an Appellate Proceeding.

**2807 IDENTIFICATION OF PLEADINGS AND OTHER PAPERS FILED; UNREPRESENTED AND REPRESENTED PARTIES**

2807.1 Unless otherwise provided by these Rules, the first pleading or paper filed by or on behalf of a party shall set forth the party's name, full business or residence address, telephone number(s), and fax number(s), if any. All subsequent pleadings or other papers filed by or on behalf of a party shall set forth the same information, unless the party is represented by counsel or other authorized representative. Except when denying a charge in a Notice of Infraction or Notice of Violation and challenging personal jurisdiction, or unless otherwise specified, the filing of a pleading or paper in conformity with this Section constitutes the entry of an appearance by the party.

2807.2 If a party is represented by counsel, all pleadings and other papers shall set forth the name, full business or street address, telephone number(s), fax number(s), if any, and bar number of the attorney. Except when denying a charge in a Notice of Infraction or Notice of Violation and challenging personal jurisdiction, or unless otherwise specified, the filing of a pleading or paper in conformity with this Section constitutes the entry of an appearance by counsel.

2807.3 If a party is represented by an authorized representative, all pleadings and other papers shall set forth the name, full business or street address, telephone number(s), fax number(s), if any, of the authorized representative. Except when denying a charge in a Notice of Infraction or Notice of Violation and challenging personal jurisdiction, or unless otherwise specified, the filing of a pleading or paper in conformity with this Section constitutes the entry of an appearance by the authorized representative.

2807.4 The information provided to this administrative court pursuant to this Rule shall be conclusively deemed to be correct and current. It is solely the obligation of a party, an authorized representative, or an attorney whose address, telephone number(s), or fax number(s) has been changed to promptly notify the Clerk and all other parties. Any change of address shall be filed with this administrative court and upon all parties within three (3) business days of its occurrence.

2807.5 A pleading or other paper not conforming to the requirements of this Rule may be rejected for filing by the Clerk of this administrative court or ordered stricken by the presiding Administrative Law Judge.

**2808 SERVICE: PAPERS TO BE SERVED**

2808.1 Except as otherwise provided in these Rules or by statute, every order required by its terms to be served, every pleading, except an answer to a

Notice of Infraction or Notice of Violation, and every other paper filed in this administrative court shall be served upon the parties, or, if represented, their attorneys or authorized representatives. Proof of service must be filed in accordance with Rule 2810.

**2809 SERVICE: HOW MADE**

2809.1 Unless otherwise ordered by this administrative court or consented to by the parties and their counsel or their authorized representatives, service of the orders of this administrative court shall be made on the parties.

2809.2 A Notice of Infraction or a Notice of Violation shall be served in the manner and as provided by statute.

2809.3 Unless otherwise ordered by this administrative court or agreed upon by the parties, their counsel or their authorized representatives, service shall be made by delivering a copy to the last known address of the party, attorney or authorized representative, by mailing a copy to the last known address of the party, attorney or authorized representative, or by third-party commercial carrier if delivered within three (3) days.

2809.4 Delivery of a copy within this Rule means:

- (1) handing it to the attorney, party or authorized representative; or leaving it at the party's, attorney's or authorized representative's office or place of business with an individual of suitable age and discretion then employed therein;
- (2) leaving it at the party's dwelling house or usual place of abode with some individual of suitable age and discretion then located therein.

2809.5 Service by mail is complete upon depositing the copy with the United States Postal Service (including a mailbox regularly serviced by the United States Postal Service), with no less than first-class postage prepaid, and addressed to the attorney, party or authorized representative at the proper address.

2809.6 Service by a third party commercial carrier is complete upon deposit of the copy, addressed to the attorney, party or authorized representative at the proper address, into the custody of the carrier for delivery within no more than three (3) days of the carrier's receipt, with the cost of delivery prepaid.

2809.7 If agreed upon in writing by the parties, their counsel or their authorized representatives, service of a paper may be made upon the opposing party by email or other means.

2809.8 Except as provided in Section 2809.1, this Rule does not apply to the transmittal of papers by this administrative court.

## **2810 FILING OF PAPERS; CERTIFICATE OF SERVICE REQUIRED**

2810.1 The filing of papers with the administrative court as required by these Rules shall be made by delivering them to the Clerk in accordance with Rules 2809 and 2840.

2810.2 Unless otherwise provided by statute or these Rules, documents may be faxed to this administrative court in a manner prescribed by the Clerk, and any such document shall be considered filed as of the date the fax is received, provided that a hard copy is filed with the Clerk within three (3) business days of the transmission.

2810.3 Except as provided in these Rules, or unless otherwise ordered by the administrative court, no paper may be filed with this administrative court by email or other means.

2810.4 Except for an answer and plea to a Notice of Infraction or Notice of Violation, or as otherwise provided by statute or these Rules, all papers filed with this administrative court must contain a certificate of service identifying the individual serving the document as well as the parties served, the manner of service and date of service. A failure to provide a certificate of service may result in a paper being rejected for filing by the Clerk or ordered stricken by the presiding Administrative Law Judge.

## **2811 TIME COMPUTATION**

2811.1 This Rule applies to all periods of time prescribed or allowed by these Rules, by order of this administrative court, or by any applicable law.

2811.2 In computing any period of time measured in days or calendar days, the day of the act, event or default from which the designated period of time begins to run shall not be included. If a period is measured in hours, then this Section does not apply.

2811.3 For any period that is measured in days or calendar days, the last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday, or when the act to be done is the filing of any paper with this administrative court, an inaccessible day, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11)

days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation, unless the period is measured in calendar days.

2811.4 In computing any period of time measured in hours, no hours shall be excluded from the computation, except as provided in this Section, and this Section shall not apply to any period measured in days or calendar days:

- (a) If any period expires before 10:00 AM on any day, it shall be extended to 10:00 AM that day.
- (b) If any period expires after 4:00 PM on any day, it shall be extended to 10:00 AM on the next business day.
- (c) If any period expires on a Saturday, Sunday, legal holiday or inaccessible day, it shall be extended to 10:00 AM on the next business day.

2811.5 Whenever a party has the right or the obligation to do some act within a prescribed period after service of an order or other paper upon the party, and the order or other paper is served by United States mail or third party commercial carrier, five (5) days shall be added to the prescribed period, unless a statute provides otherwise.

2811.6 Whenever these Rules or an order of this administrative court require or allow an act to be done at or within a specified time, this administrative court, for good cause shown, may order the period enlarged or reduced if a request is made before expiration of the period, or, if the period has expired, may enlarge it if the failure to act was the result of excusable neglect; however this Section does not authorize the reduction or enlargement of any period prescribed by law, or any period provided under Rules 2829, 2832, 2833 or 2835 of this Chapter.

## **2812 MOTIONS**

2812.1 An application to this administrative court for any interlocutory order shall be by motion. Unless made on the record in open court, all motions shall be in writing; shall list the case caption, docket number and presiding Administrative Law Judge prominently on the first page; and shall state with particularity the grounds for the motion, any supporting points and authorities, and the relief sought.

2812.2 When a motion is based on facts not appearing in the record, the parties may file affidavits or declarations pursuant to Section 2821.7.

- 2812.3 Except as otherwise ordered by this administrative court, a separate memorandum of points and authorities and proposed order need not be filed with a motion.
- 2812.4 Except as otherwise ordered by this administrative court, no dispositive motion may be filed fewer than fourteen (14) days prior to a trial before this administrative court absent a showing of good cause.
- 2812.5 Prior to filing any non-dispositive motion, the moving party shall first seek to obtain the consent of all other parties to the requested relief, and shall state on the first page of the motion the date, the approximate time and means used to communicate with each party, as well as whether all other parties consent to, oppose, or do not oppose the requested relief. Failure to comply with the requirements of this Section may result in the summary denial of the motion, or the motion being rejected for filing by the Clerk.
- 2812.6 When a request for consent is made by leaving an oral or written message because the party whose consent is being sought is unavailable at the time of the request, the party requesting consent shall wait at least twenty-four (24) hours, or until the next business day, whichever is later, before filing or serving the motion.
- 2812.7 Unless otherwise ordered by this administrative court, all opposing parties shall have eleven (11) days from service of the motion to file and serve a response. Replies shall be permitted only upon order of this administrative court.
- 2812.8 All motions shall be decided on the papers unless otherwise ordered.

## **2813 RESPONSIVE PLEADINGS**

- 2813.1 Unless otherwise specified by applicable law, a party may answer a Notice of Infraction by pleading Admit, Admit with Explanation, or Deny as follows:
- (a) A party who pleads Admit shall submit payment of the fine specified on the Notice of Infraction with the plea.
  - (b) A party who pleads Admit with Explanation shall file with the plea a written explanation and any other papers that the party wishes to have considered that explain the circumstances surrounding the infraction, and/or that the party believes justify a reduction or a suspension of the fine.
    - (1) The Government may file a response to a plea of Admit with Explanation within fourteen (14) days of the service of the plea by this administrative court.

(2) An Admit with Explanation case shall ordinarily be heard solely on the papers filed with this administrative court. In its discretion, this administrative court may require further submissions from the parties and/or may require a trial on any issue raised in the parties' papers, either on its own motion, or upon the motion of a party, where written submissions alone can not adequately explain the circumstances of the infraction.

(c) If a party pleads Deny, this administrative court shall hold a trial and shall issue a scheduling order setting the trial date and time and addressing other procedural issues. The trial date ordinarily shall be the pre-scheduled date stated on the Notice of Infraction, but this administrative court may change that date on motion for good cause, or on its own motion to promote sound judicial administration. In case of conflict between the trial date and time on the Notice of Infraction, and the trial date and time on the scheduling order, the scheduling order shall control.

2813.2 Unless otherwise ordered, a party that pleads Deny to a Notice of Infraction shall file and serve upon all parties, in a manner consistent with applicable law, these Rules and the requirements of due process, a copy of all exhibits the party intends to offer in defending the case. Such exhibits shall be filed and served within ten (10) days of trial, unless, for good cause shown, such exhibits can not be so filed and served. In lieu of submitting exhibits as specified in this Section, the party may submit a statement that no exhibits shall be offered in defending the case. Failure to comply with this Section may result in the preclusion of the party's exhibits at trial.

2813.3 Unless otherwise specified by applicable law, a party may answer a Notice of Violation by pleading Admit, Admit with Explanation, or Deny as follows:

(a) A party who pleads Admit shall submit payment of the fine specified on the Notice of Violation with the plea and shall certify on the Notice of Violation form whether the violation has been abated.

(b) A party who pleads Admit with Explanation shall file with the plea a written explanation and any other papers that the party wishes to have considered that explain the circumstances surrounding the violation, and/or that the party believes justify a reduction or a suspension of the fine.

(1) The Government may file a response to a plea of Admit with Explanation within fourteen (14) days of the service of the plea by this administrative court.

(2) An Admit with Explanation case shall ordinarily be heard solely on the papers filed with this administrative court. In its discretion, this administrative court may require further submissions from the parties and/or may require a trial on any issue raised in the parties' papers, either on its own motion, or upon the motion of a party, where written submissions alone can not adequately explain the circumstances of the violation.

(c) If a party pleads Deny, this administrative court shall hold a trial and shall issue a scheduling order setting the trial date and time and addressing other procedural deadlines. The trial date ordinarily shall be the pre-scheduled date stated on the Notice of Violation but this administrative court may change that date on motion for good cause, or on its own motion to promote sound judicial administration. In case of conflict between the trial date and time on the Notice of Violation, and the trial date and time on the scheduling order, the scheduling order shall control.

2813.4 Unless otherwise ordered, a party that pleads Deny to a Notice of Violation shall file and serve upon all parties, consistent with applicable law, these Rules and the requirements of due process, a copy of all exhibits the party intends to offer in defending the case. Such exhibits shall be filed and served within ten (10) days of trial, unless, for good cause shown, such exhibits can not be so filed and served. In lieu of submitting exhibits as specified in this Section, the party may submit a statement that no exhibits shall be offered in defending the case. Failure to comply with this Section may result in the preclusion of the party's exhibits at trial.

2813.5 Unless otherwise ordered, no responsive pleading is required in cases commenced by a request for a hearing.

#### **2814               SIGNING    OF    PAPERS;    LEGIBILITY    OF    PAPERS; REPRESENTATION TO OAH; SANCTIONS**

2814.1 Unless otherwise provided by statute or these Rules, every paper filed with this administrative court shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party or party's authorized representative

in accordance with the requirements of Rule 2807. A name affixed by an autopen or rubber stamp shall not be deemed a signature.

2814.2 An unsigned paper shall be rejected for filing by the Clerk or stricken by order of the presiding Administrative Law Judge unless omission of the signature is corrected prior to such action.

2814.3 Every paper filed with this administrative court shall be legible. An illegible paper shall be rejected for filing by the Clerk or ordered stricken by the presiding Administrative Law Judge unless a legible replacement is filed prior to such action. If permitted, a legible replacement shall supercede an illegible submission in its entirety.

2814.4 By presenting any paper to this administrative court (whether by signing, filing, or submitting), an attorney, unrepresented party or other authorized representative is certifying that to the best of that individual's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or to needlessly increase the cost of litigation;
- (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a good faith and nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

2814.5 If, after notice and an opportunity to respond, this administrative court determines that the provisions of Section 2814.4 have been violated, this administrative court may, pursuant to Section 12 of the Act and these Rules, impose an appropriate sanction upon any attorney, law firm or representative that is determined to be in violation.

## **2815 ALTERNATIVE DISPUTE RESOLUTION**

2815.1 Pursuant to Section 8 of the Act, the Chief Administrative Law Judge may establish practices and procedures for any Alternative Dispute Resolution (ADR) program for the Office of Administrative Hearings.

2815.2 Subject to any procedural requirements designated by the Chief Administrative Law Judge, a presiding Administrative Law Judge may refer any case for mediation or early neutral case evaluation unless otherwise prohibited by law.

**2816 SUBSTITUTION OF PARTIES; INTERVENTION**

2816.1 Upon oral or written motion, and with the consent of the party to be substituted or as otherwise authorized by law, this administrative court may permit such substitution of parties as justice requires.

2816.2 Anyone who has an interest in the subject matter of a case pending before this administrative court, and who contends that the representation of his or her interest may be inadequate, may file a motion to intervene in accordance with Rule 2812 stating the specific ground upon which intervention is sought, and attaching a pleading setting forth the claim or defense for which intervention is sought. Motions to intervene shall be decided in accordance with the provisions of D.C. Superior Court Civil Rule 24.

2816.3 In order to avoid undue delay or prejudice to the adjudication of the rights of the original parties, this administrative court may limit the terms and conditions of intervention.

2816.4 Notwithstanding any other provision of this Rule, no person may intervene as a co-petitioner with the Government in any action commenced by a Notice of Infraction or Notice of Violation or any Government enforcement action where the only remedy sought is a fine or monetary penalty.

**2817 VOLUNTARY DISMISSAL OF ACTIONS**

2817.1 A petitioner may file a summary motion for voluntary dismissal of any action, or of any claim asserted in an action, at any time, either before or after a respondent has answered a Notice of Infraction or Notice of Violation, or has otherwise appeared in an action, and the presiding Administrative Law Judge may grant a summary motion for voluntary dismissal without awaiting a response from the respondent.

2817.2 A respondent who objects to any aspect of an order granting a motion for voluntary dismissal may file a motion for reconsideration as provided in Rule 2832.

2817.3 The parties, or their authorized agents or representatives, also may file a stipulation of voluntary dismissal with prejudice, signed by all parties, their authorized agents or representatives, who have appeared in the action to dismiss an action.

- 2817.4 Unless otherwise provided by statute, these Rules or an order of this administrative court, a dismissal under this Rule is without prejudice unless otherwise stipulated by the parties; except that the dismissal of an action under this Rule that follows a prior dismissal without prejudice, shall be with prejudice unless otherwise ordered by the presiding Administrative Law Judge.
- 2817.5 Unless otherwise provided by statute, these Rules or order of this administrative court, the voluntary withdrawal of a request for a hearing shall be construed as a voluntary dismissal of an action.
- 2817.6 Nothing in this Rule shall preclude the presiding Administrative Law Judge from ordering that a dismissal shall be with prejudice in order to prevent unfair prejudice, inequity, or undue delay.

## **2818 INVOLUNTARY DISMISSAL OF ACTIONS**

- 2818.1 For failure of the petitioner to prosecute or to comply with these Rules or any order of this administrative court, a respondent may move for dismissal of an action or of any claim against the respondent or the presiding Administrative Law Judge may order such dismissal on his or her own motion.
- 2818.2 Any order of involuntary dismissal entered on the presiding Administrative Law Judge's own motion shall not become final until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by petitioner within such fourteen (14) day period showing good cause why the case should not be dismissed, and why the failure to comply resulted from excusable neglect.
- 2818.3 Unless otherwise provided by statute, these Rules or order of this administrative court, a dismissal under this Rule is with prejudice.

## **2819 CONSOLIDATION; SEPARATE TRIALS**

- 2819.1 When actions involving a common question of law or fact are pending before this administrative court, or when multiple Notices of Infraction or Notices of Violation involving the same respondent are pending before this administrative court, this administrative court may, upon motion by any party or on its own motion, order a joint trial of any or all the matters in issue in the actions; may order all actions consolidated for any or all purposes; and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.
- 2819.2 Whenever a case is commenced by the filing of a second Notice of Infraction against a respondent pursuant to applicable law, it shall be consolidated with the case arising out of the first Notice of Infraction, without further order.

2819.3 This administrative court, in furtherance of convenience or to avoid unfair prejudice, or when separate trials would be conducive to expedition and economy, may order a separate trial of any claim or claims or of any separate issue or issues.

**2820 EVIDENCE BEFORE OAH**

2820.1 Evidence shall not be excluded on the ground that it is hearsay.

2820.2 Subject to the limitation stated in Section 2820.1, in determining the weight as well as the admissibility of evidence, the Federal Rules of Evidence shall be deemed persuasive authority.

2820.3 Unless otherwise required by applicable law, a party asserting an avoidance or other exception to the requirements or prohibitions of a statute or administrative rule shall bear the burden of production and persuasion in proving the exception.

**2821 TESTIMONY; OATHS**

2821.1 Unless otherwise provided by statute, protective order or these Rules, the testimony of witnesses at trial shall be taken in open court.

2821.2 The presiding Administrative Law Judge may, for good cause shown and with appropriate safeguards, permit presentation of testimony in any proceeding by contemporaneous transmission from a different location, consistent with the requirements of due process. The presiding Administrative Law Judge also may permit the direct testimony of any witness to be submitted in written form in advance of the trial, with the witness appearing in the proceeding for cross-examination, redirect examination and any further testimony permitted.

2821.3 No hearing or trial shall be held outside a courtroom of this administrative court, except where required by law upon a lawful request not made for any improper purpose, and upon a determination by the presiding Administrative Law Judge in consultation with the Chief Administrative Law Judge or his or her designee that a hearing or trial may be conducted in an alternative location consistent with safety, decorum, the creation of a reliable record, and fundamental fairness.

2821.4 All witnesses must testify under oath, except that this administrative court shall accept a solemn affirmation in lieu of an oath. Nothing in this Rule precludes the admission of an affidavit or other sworn written statement in a proceeding before this administrative court.

2821.5 Unless otherwise provided by law, whenever an oral oath is required by these Rules or applicable law, the individual making the oath shall solemnly swear or affirm under the penalties of perjury that the responses

given and statements made will be the truth, the whole truth and nothing but the truth.

2821.6 An interpreter appearing in a matter before this administrative court shall solemnly swear or affirm under penalty of perjury to interpret accurately, completely, and impartially.

2821.7 Whenever any applicable law or regulation requires or permits the filing in this administrative court of an affidavit or other writing subscribed to under oath, the subscriber, in lieu of a sworn or notarized statement, may submit a written declaration subscribed as true under penalty of perjury in substantially the following form:

“I declare (or certify, verify, or state) under penalty of perjury, that the foregoing is true and correct. Executed on (date).

“Signature”

2821.8 Pursuant to the Sections 12 and 15 of the Act, all Administrative Law Judges, and the Clerk and his or her designees, are authorized to administer oaths.

## **2822 SUBPOENAS**

2822.1 Subpoenas shall only be issued by the presiding Administrative Law Judge and shall be served in accordance with the provisions of D.C. Superior Court Rule 45.

2822.2 Unless otherwise provided by law or order of this administrative court, any request for a subpoena shall be filed no later than eleven (11) days prior to the proposed return date, and must state the relevance of the requested information or testimony to the pending case. Failure to comply with the requirements of this Section may result in the summary denial of the subpoena request.

## **2823 DISCOVERY**

2823.1 Except as permitted in Rule 2822, no discovery shall be permitted unless authorized by order of the presiding Administrative Law Judge. Discovery shall be limited to Complex Track cases, and all requests for discovery shall be made upon motion.

- 2823.2 Unless otherwise provided for by law or these Rules, the presiding Administrative Law Judge may permit any means of discovery available pursuant to the D.C. Superior Court Rules of Civil Procedure in accordance with the provisions of these Rules.
- 2823.3 If a motion to permit discovery is granted, based on the discovery requested, the presiding Administrative Law Judge may order the submission of a joint discovery plan, the use of a specific method of discovery, or the service of a specific discovery request. The responding party shall have fourteen (14) days to respond to a specific discovery request in a manner otherwise consistent with the provisions of the D.C. Superior Court Rules of Civil Procedure.
- 2823.4 The use of interrogatories is disfavored, and shall not be permitted unless otherwise ordered by this administrative court upon a showing by the proposing party that the information sought cannot reasonably and efficiently be obtained by an alternative method. When authorized, the number of interrogatories ordinarily should not exceed ten (10) including subparts.
- 2823.5 Notwithstanding any other provision of these Rules, each deposition must be specifically authorized in advance by order of this administrative court.
- 2823.6 Unless otherwise ordered by this administrative court, all discovery shall be completed no later than thirty (30) days prior to the trial date. All discovery requests must be timely served sufficiently in advance so as to permit responses consistent with this Rule to be served on or before this deadline.
- 2823.7 Sanctions for failure of a party to comply with an order of this administrative court made pursuant to this Rule shall be as permitted by applicable law.

## **2824 JUDGMENT AS A MATTER OF LAW**

- 2824.1 If during a trial a party has been fully heard on an issue and this administrative court finds against the party on that issue, this administrative court may enter judgment as a matter of law against that party with respect to any claim or defense that, under the controlling law, cannot be maintained or defeated without a favorable finding on that issue. Alternatively, this administrative court may decline to render any judgment until the close of all evidence.
- 2824.2 Motions under this Rule may be made at any time before the record is closed, or as otherwise scheduled by this administrative court, and shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

**2825 RELIEF GRANTED IN FINAL ORDERS**

- 2825.1 The relief granted in any final order issued under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18) or D.C. Official Code Title 8, Chapter 8, shall not be different in kind from, or exceed in amount, the relief that was requested.

**2826 TRANSCRIPTS; CITATION AND COSTS**

- 2826.1 All trials and other proceedings shall be recorded in a manner consistent with the creation of a reliable and comprehensible record. The product of such recordation is the only official record of a proceeding before this administrative court.
- 2826.2 Unless otherwise provided by law or these Rules, recordings of this administrative court's proceedings may be obtained at the requesting party's expense or, if authorized by law, at the expense of the litigating agency.
- 2826.3 Transcripts of the recording of the proceedings shall be prepared by a qualified reporter or transcriber who shall personally certify under oath that he or she is not a party or counsel to a party or otherwise related to or employed by the party or counsel in the case; that he or she has no material interest in the outcome of the case; and that the transcript represents the testimony and proceedings of the case as recorded. The Chief Administrative Law Judge may set standards regarding the qualification of reporters or transcribers.
- 2826.4 A party may only cite to a transcript as provided under this Rule.
- 2826.5 Unless otherwise stipulated by the parties or ordered by this administrative court, if a party cites to a portion of a transcript, the entire transcript of the case shall be filed with this administrative court, and a copy served upon all parties.

**2827 DEFAULTS**

- 2827.1 If a respondent fails to answer a Notice of Infraction within the time allowed by law, an Administrative Law Judge or the Clerk shall enter a notice finding the respondent in default and notifying the respondent of any penalties provided by applicable statute.
- 2827.2 If a respondent fails to answer a second Notice of Infraction, an Administrative Law Judge shall enter a final notice of default finding the respondent in default and notifying the respondent of any penalties provided by applicable statute.

- 2827.3 If a respondent fails to answer a Notice of Violation, an Administrative Law Judge shall enter a final notice of default finding the respondent in default and notifying the respondent of any penalties provided by applicable statute.
- 2827.4 A final notice of default shall set a date for an *ex parte* proof hearing, and shall notify the respondent of an opportunity to appear at the hearing to contest liability, fines, or penalties. It shall also require the respondent to notify this administrative court and the Government, at least ten (10) days before the scheduled hearing, of the intention to appear.
- 2827.5 In all cases in which a final notice of default has been issued, this administrative court shall conduct an *ex parte* proof hearing to receive evidence offered by the Government, and by any respondent who has filed a timely notice of intention to appear. If a respondent appears at an *ex parte* proof hearing without having filed a timely statement of intention to do so under this Rule, this administrative court may, in its discretion, hear testimony and/or receive exhibits from the respondent, or may set a new trial date.
- 2827.6 The appearance by a respondent at an *ex parte* proof hearing under this Rule shall not by itself be a basis for suspending or reducing any authorized penalties for failure to timely answer the Notice(s) of Infraction or Notice of Violation.

## **2828 SUMMARY ADJUDICATION**

- 2828.1 Motions for summary adjudication or comparable relief may be filed in accordance with Rule 2812.

## **2829 PAYMENT PLANS**

- 2829.1 For cases arising under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18), upon application of a respondent adjudged liable for monetary sanctions, this administrative court may, in its discretion, permit installment payments, not to extend six (6) months beyond the date the order imposing the sanction becomes final, and allowing a fee of one percent (1%) per month of the outstanding amount owed by a respondent for the installment service.
- 2829.2 In requesting a payment plan under this Rule, the respondent shall state in writing the reasons for seeking a payment plan, and the length of payment plan time requested. The request must also include information sufficient to demonstrate why respondent cannot afford to pay the outstanding monetary sanction in a lump sum, such as copies of respondent's most recent tax returns, bank statements, balance sheets, and/or cash flow statements.

- 2829.3 Unless otherwise ordered by the presiding Administrative Law Judge for good cause shown and upon a demonstration of excusable neglect, requests for payment plans under this Rule must be filed and served upon the Government within sixty (60) days of the service of the final order under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18).
- 2829.4 The Government is permitted to file and serve a response to a request for a payment plan within five (5) days of the service of the request.
- 2830 REOPENING A MATTER TO RECOVER ABATEMENT COSTS; REQUEST FOR HEARING**
- 2830.1 For cases arising D.C. Official Code Title 8, Chapter 8 in which a final order has been issued, the Government may elect to move to reopen a case, as of right, to seek a collateral order providing for abatement costs. The Government may do so by filing and serving upon respondent a bill of abatement costs not later than one hundred twenty (120) days after service of the final order. Failure, without good cause, to file and serve a bill of abatement costs in the time prescribed in this Section shall preclude recovery.
- 2830.2 Except as provided in Section 2830.4, a request by a respondent for hearings on the Government's motion for abatement cost recovery shall be in writing, and shall be filed within thirty (30) days of service of the bill of abatement costs by the Government upon the respondent.
- 2830.3 If a respondent files a timely request for a hearing to contest a claim for abatement costs made pursuant to Section 2830.1, the presiding Administrative Law Judge shall hold a hearing limited to the issue of the amount of the abatement costs. Such a hearing, and any *ex parte* proof hearing held pursuant to Sections 2830.4 and 2830.5, shall not re-litigate the liability of a respondent previously held liable for the violation for which the Government is claiming abatement costs.
- 2830.4 If a respondent does not file a request for a hearing within the deadline established in Section 2830.2, this administrative court, prior to awarding an order of abatement costs to the Government pursuant to Section 2830.1, shall provide for an *ex parte* proof hearing at which the Government shall bear the burden of demonstrating it is entitled to an order granting abatement costs. Notwithstanding Section 2830.2, the respondent may elect to appear at the hearing to contest only the amount of the abatement costs being sought by the Government.
- 2830.5 Pursuant to Section 2830.4, a case management order shall be issued and shall set a date for the *ex parte* proof hearing, and shall notify the respondent of an opportunity to appear at the hearing to contest liability. It

shall also require the respondent to notify this administrative court and the Government, at least ten (10) days before the scheduled hearing, of the intention to appear. If a respondent appears at an *ex parte* proof hearing without having filed a timely statement of intention to do so under this Section, this administrative court in its discretion may hear testimony and/or receive exhibits from the respondent, or may set a new trial date.

## **2831 NEW TRIALS**

- 2831.1 A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which rehearings have heretofore been granted in the courts of the United States or of the District of Columbia.
- 2831.2 Upon such motion, this administrative court may reopen the record in the matter, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions and issue a new final order.
- 2831.3 Unless otherwise ordered by an Administrative Law Judge, the filing of a motion for a new trial shall not stay the effectiveness of the final order. If such a motion is timely filed, the final order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Administrative Law Judge or is denied by operation of law.
- 2831.4 Any motion for a new trial shall be filed within ten (10) days of service of the final order. The failure to comply with the requirements of this Section may result in the summary denial of the requested relief.
- 2831.5 No response to a motion for a new trial is required unless ordered by this administrative court, which order shall specify procedures and deadlines for future filings on the issue. This administrative court shall not grant such a motion unless it affords the opposing party an opportunity to respond.
- 2831.6 No later than ten (10) days after service of the final order, this administrative court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, this administrative court may grant a timely motion for a new trial for a reason not stated in the motion.
- 2831.7 When granting a new trial, this administrative court shall specify the grounds in its order.
- 2831.8 A motion filed pursuant to this Rule shall be deemed to be denied if the Administrative Law Judge has not ruled upon it within thirty (30) days of its filing. After the running of that 30-day period, the Administrative Law Judge in his or her discretion may choose to file a statement of reasons for denying the motion. The filing of any such statement shall not affect the running of any deadline for filing an appeal or petition for judicial review.

## **2832 RECONSIDERATION**

- 2832.1 Reconsideration of a final or interlocutory order may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which reconsideration has heretofore been granted in the courts of the United States or of the District of Columbia.
- 2832.2 If a motion for reconsideration is granted, this administrative court may reopen the record in the matter, amend findings of fact and conclusions of law or make new findings and conclusions and issue a new order.
- 2832.3 Unless otherwise ordered by an Administrative Law Judge, the filing of a motion for reconsideration shall not stay the effectiveness of the order. With respect to a final order, if such a motion is timely filed, the order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Administrative Law Judge or is denied by operation of law.
- 2832.4 Any motion for reconsideration shall be filed within ten (10) days of service of a final order, and may be entertained within the presiding Administrative Law Judge's discretion after service of an interlocutory order. The failure to comply with the requirements of this Section may result in the summary denial of the requested relief.
- 2832.5 No response to a motion for reconsideration is required unless ordered by this administrative court, which order shall specify procedures and deadlines for future filings on the issue. This administrative court shall not grant such a motion unless it affords the opposing party an opportunity to respond.
- 2832.6 A motion filed pursuant to this Rule shall be deemed to be denied if the Administrative Law Judge has not ruled upon it within thirty (30) days of its filing. After the running of that 30-day period, the Administrative Law Judge in his or her discretion may choose to file a statement of reasons for denying the motion. The filing of any such statement shall not affect the running of any deadline for filing an appeal or petition for judicial review.

## **2833 RELIEF FROM FINAL ORDERS**

- 2833.1 Clerical mistakes in orders or other parts of the record and errors arising therein from oversight or omission may be corrected by this administrative court at any time of its own initiative or on the motion of any party and after such notice, if any, as this administrative court orders. During the pendency of any proceeding for judicial review, such mistakes may be so corrected before the appeal is docketed in the reviewing court, and thereafter may be so corrected with leave of the reviewing court.

2833.2 On motion and upon such terms as are just, this administrative court may relieve a party or a party's legal representative from a final order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 2831; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the final order is void; (5) a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the final order.

2833.3 A motion for relief under Section 2833.2 shall be made within a reasonable time, and in no event more than ninety (90) days after service of the final order, or in the case of a final order issued by an agency other than OAH for a subject matter now under the jurisdiction of OAH, not later than March 22, 2005. The filing of such a motion does not affect the finality of an order or suspend its operation.

2833.4 This Rule does not limit the power of a court of competent jurisdiction to entertain an independent action to relieve a party from a final order, or to set aside a judgment for fraud upon this administrative court.

#### **2834 HARMLESS ERROR**

2834.1 No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by this administrative court or by any of the parties is grounds for granting a new trial or for vacating, modifying or otherwise disturbing an order, unless refusal to take such action appears to this administrative court to be inconsistent with substantial justice.

2834.2 This administrative court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

**2835 STAY OF FINAL ORDERS**

- 2835.1 Unless otherwise provided by statute or by this administrative court, neither the filing of an appeal, a petition for review nor of any post-trial motion shall stay the effectiveness of a final order. A stay shall be granted only upon order of this administrative court.
- 2835.2 In determining whether to grant a stay, this administrative court shall assess whether the movant is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether granting the stay will harm other parties, and whether the public interest favors granting a stay as set forth in *Kufлом v. District of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340, 344 (D.C. 1988).
- 2835.3 This Rule does not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of a petition for review, or to suspend, modify, restore, or grant an injunction during the pendency of an application for judicial review or a petition for review, or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

**2836 INABILITY OF JUDGE TO PROCEED**

- 2836.1 If a trial has commenced and the assigned Administrative Law Judge is unable to proceed, any other Administrative Law Judge may proceed with it upon certifying on the record familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties.
- 2836.2 The successor Administrative Law Judge shall at the request of a party listen to the recorded testimony of any witness whose testimony is material and disputed, and may also listen to the recorded testimony of any other witness. If a recording of the trial or any part of the trial is unavailable, the successor Administrative Law Judge shall recall witnesses in accordance with the standards in D.C. Superior Court Rule 63.

**2837 RECUSAL; ETHICS COMPLIANCE**

- 2837.1 An Administrative Law Judge shall recuse himself or herself in accordance with the standards applicable to judges of the Superior Court of the District of Columbia, unless a different standard is required under the authority of the Act.
- 2837.2 Administrative Law Judges shall at all times be in compliance with the requirements of the OAH Ethics Manual, a copy of which shall be maintained by the Chief Administrative Law Judge or his or her designee.

**2838 APPEARANCE OF ATTORNEYS**

2838.1 An individual or other party may be represented before this administrative court by an attorney. Unless otherwise provided by statute or these Rules, only attorneys who are active members in good standing of the District of Columbia Bar may appear before this administrative court as a representative of a party.

2838.2 An attorney who is not a member of the District of Columbia Bar may appear before this administrative court consistent with District of Columbia Court of Appeals Rule 49 and other applicable law, upon the filing and granting of a motion to appear *pro hac vice*, in which the attorney shall declare under penalty of perjury:

- (a) That I have not applied for admission *pro hac vice* in more than five cases in this administrative court or in the courts of the District of Columbia during this calendar year;
- (b) That I am a member in good standing of the highest court(s) of the State(s) of \_\_\_\_\_ (list state all states);
- (c) That there are no disciplinary complaints pending against me for violation of the rules of the courts of those states;
- (d) That I have not been suspended or disbarred for disciplinary reasons from practice in any court;
- (e) That I do not practice or hold out to practice law in the District of Columbia;
- (f) That I have read all of the rules of this administrative court and the District of Columbia Court of Appeals, and have complied fully with District of Columbia Court of Appeals Rule 49. The reason(s) I am applying for admission *pro hac vice* are as follows: \_\_\_\_\_ (list all reasons); and
- (g) I acknowledge the jurisdiction of this administrative court and the courts of the District of Columbia over my professional conduct, and I agree to be bound by the District of Columbia Court of Appeals Rules of Professional Conduct, in this matter, if I am admitted *pro hac vice*. I have applied for admission *pro hac vice* in this administrative court and in the courts of the District of Columbia \_\_\_\_\_ (list number) times previously in this calendar year.

2838.3 As part of any motion to appear *pro hac vice* under this Rule, the attorney must also provide satisfactory evidence that his or her client consents to

being represented by an attorney who is not a member of the District of Columbia Bar.

- 2838.4 Current law students active in *pro bono* legal clinics may appear before this administrative court with the consent and oversight of the supervising attorney assigned to them and in a manner consistent with District of Columbia Court of Appeals Rule 48, and under any limitations ordered by the presiding Administrative Law Judge.
- 2838.5 In addition to these Rules, the District of Columbia Rules of Professional Conduct shall govern the conduct of all attorneys appearing before this administrative court.
- 2838.6 Pursuant to Section 17 of the Act, and in the exercise of this administrative court's inherent authority to regulate and manage practice before it, *Ramos v. District of Columbia Department of Consumer and Regulatory Affairs*, 601 A.2d 1069, 1073-74 (D.C. 1992), the Chief Administrative Law Judge or presiding Administrative Law Judge may restrict the practice of any attorney appearing before this administrative court. Such restrictions may include, without limitation:
- (a) disqualification from a particular case;
  - (b) suspension of the privilege of practicing before this administrative court;
  - (c) a requirement that an attorney obtain ethics or other professional training or counseling; or
  - (d) a requirement that an attorney appear only when accompanied by another attorney with particular skills or a particular level of experience.
- 2838.7 The Chief Administrative Law Judge or presiding Administrative Law Judge may enter an order restricting practice in the event of a violation of these Rules or for other good cause. If imposing a disqualification or suspension, the attorney shall be given notice and opportunity to be heard either before the imposition of the suspension or disqualification, or as soon thereafter as is practicable.
- 2838.8 An Administrative Law Judge may exercise the authority under this Rule only against an attorney who has appeared before that judge in a case that continues to be pending. If an Administrative Law Judge exercises such authority, the affect of an order restricting practice shall be limited to the subject attorney's practice before the issuing judge. Nothing in this Rule limits the authority of the Chief Administrative Law Judge to enter a separate order restricting an attorney's privilege of practicing before this administrative court.

**2839 APPEARANCE OF NON-ATTORNEYS**

- 2839.1 An individual may represent himself or herself in proceedings before this administrative court.
- 2839.2 An Administrative Law Judge may permit a party to be represented by a family member without charge or fee. An Administrative Law Judge may permit a party to be represented by an individual, or by a representative of any entity listed in Section 2839.4, if the party had a contractual relationship substantially related to the subject matter of the case that existed prior to the case arising (such as a landlord/tenant or owner/property manager relationship).
- 2839.3 An agency may be represented before this administrative court by the Corporation Counsel, an attorney assigned to the agency, or by a duly authorized agency employee when consistent with applicable law.
- 2839.4 A corporation, partnership, limited partnership, or other private legal entity may be represented in proceedings before this administrative court by a duly authorized officer, director, general partner, or employee.
- 2839.5 Pursuant to Section 17 of the Act, and in the exercise of this administrative court's inherent authority to regulate the practice of individuals who appear before it, *Ramos v. District of Columbia Department of Consumer and Regulatory Affairs*, 601 A.2d 1069, 1073-74 (D.C. 1992), the Chief Administrative Law Judge or an Administrative Law Judge may restrict the right of any individual to appear before this administrative court.
- 2839.6 The Chief Administrative Law Judge may enter an order restricting the right of an individual to appear before this administrative court in the event of a violation of these Rules or for other good cause. If imposing a disqualification or suspension, the individual shall be given notice and opportunity to be heard either before the imposition of the suspension or disqualification, or as soon thereafter as is practicable.
- 2839.7 An Administrative Law Judge may exercise the authority under this Rule only against an individual who has appeared before that judge in a case that continues to be pending. If an Administrative Law Judge exercises such authority, the affect of an order restricting the right of an individual to appear before this administrative court shall be limited to the subject individual's appearance before the issuing judge. Nothing in this Rule limits the authority of the Chief Administrative Law Judge to enter a separate order restricting an individual's right to appear before this administrative court.

**2840 ADMINISTRATIVE COURT AND CLERK GENERAL PROVISIONS**

- 2840.1 Unless a federal law or regulation or District of Columbia statute requires that a particular federal or District of Columbia procedure be observed, these Rules and any final or interlocutory order of this administrative court shall take precedence in the event of a conflict with other authority on any issue involving or relating to procedures of this administrative court. In determining whether an issue involves or relates to procedures of this administrative court, the presiding Administrative Law Judge shall follow the doctrine set forth in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), and related case law.
- 2840.2 Where a decision of an Administrative Law Judge is in conflict with a decision of a least one other Administrative Law Judge on the same issue, the Chief Administrative Law Judge may, upon motion by a party in a pending adjudicative case, or upon his or her own motion, assign three Administrative Law Judges who have not participated in either the pending adjudicative case or the conflicting decisions, to sit on a panel and decide all or part of the pending adjudicative case. In determining whether to convene a panel under this Section, the Chief Administrative Law Judge may consider, among other things, whether the panel is likely to provide clarity and guidance in an important legal issue before this administrative court. The denial of a request for a panel under this Section shall be deemed an interlocutory order.
- 2840.3 All papers to be filed in proceedings before this administrative court shall be filed in the Clerk's office. Unless otherwise provided by these Rules or ordered by the Chief Administrative Law Judge, no papers may be filed in the Clerk's office when this administrative court is closed, or before 9:00 AM or after 5:00 P.M. on days when this administrative court is open.
- 2840.4 Papers to be filed in an appellate proceeding or other proceeding before this administrative court may be subject to a filing fee in accordance with a fee schedule issued in accordance with Section 2840.5.
- 2840.5 By authority of the Chief Administrative Law Judge, the Clerk may create and, as necessary modify, a schedule of filing, copying and related fees consistent with applicable law, except that fees shall only apply in enforcement cases in which the amount in controversy exceeds \$500 when there is an amount in controversy. Fees shall be limited or waived in accordance with an order of this administrative court pursuant to Section 8 of the Act or other applicable law. Where a fee applies, any submission filed without tender of the required fee may be rejected for filing by the Clerk or stricken by order of the presiding Administrative Law Judge. The schedule of filing, copying and related fees may be published in the D.C. Register when created and if modified.

- 2840.6 This administrative court shall be a weapons and illegal drug free area. Weapons, including, but not limited to, guns, knives, box cutters, chemical spray and pepper spray, are strictly prohibited and subject to confiscation. This Section does not apply to law enforcement officers employed by the District of Columbia or an agency of the United States either in uniform or with a prominently displayed badge and identification.
- 2840.7 No items that are potentially toxic, dangerous or otherwise present a threat to health or safety, such as sharp objects or refuse, shall be brought into the courtrooms of OAH, its common areas or offices, or offered as evidence in any proceeding before this administrative court unless identified to the Clerk's office at least ten (10) or more days prior to the proceeding so that sufficient safeguards may be put in place. A partial list of prohibited items shall be made available in the Clerk's office.
- 2840.8 An Administrative Law Judge, security personnel or administrative court staff may order the temporary removal of any individual who presents a threat to safety or is causing or contributing to a disruption of the administrative court's operations or proceedings.
- 2840.9 A monetary sanction pursuant to Section 12 of the Act shall not be imposed by an Administrative Law Judge unless it is in writing, and either issued as part of a final order, or subsequent to the issuance of a final order, in an adjudicated case.
- 2840.10 The use of cellular phones, pagers or other devices that emit noise and/or are capable of wireless transmission or reception shall not be permitted in courtrooms during a proceeding, except that such devices are permitted if they are set in a non-audible mode and are not used for transmission during a proceeding.
- 2840.11 Any organization, group, or individual may possess or use drawing or sketching equipment in a hearing room so long as the possession or use of such equipment does not interfere with the rights of the parties to a fair hearing, does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.
- 2840.12 Broadcasting, videotaping, photographing, or audio recording by any organization, group, or individual is not permitted in hearing rooms, witness rooms, waiting rooms, reception areas, or any other rooms or areas regularly utilized by OAH for administrative court operations.
- 2840.13 For purposes of this Rule, a hearing or proceeding is any matter in which an Administrative Law Judge or the Chief Administrative Law Judge presides.
- 2840.14 Nothing in this Rule shall be construed to limit the authority of the Chief Administrative Law Judge to authorize the recordation of a proceeding for

training or evaluative purposes, to the extent that the Chief Administrative Law judge has determined that the use of such equipment does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.

2840.15 Unless otherwise prohibited by applicable law or by order of this administrative court, proceedings before this administrative court shall be open to the public.

2840.16 Unless otherwise provided in these Rules or prohibited by applicable law, the Chief Administrative Law Judge may, in his or her discretion, delegate the authority of his or her office to an Administrative Law Judge, and an Administrative Law Judge may delegate any ministerial or administrative authority of his or her office to the Clerk or his or her designees.

## **2841 REPEAL OF BOARD OF APPEALS AND REVIEW RULES OF PROCEDURE**

2841.1 Title 1, Chapter 5 of the District of Columbia Municipal Regulations is hereby repealed effective March 22, 2004.

## **2842 REVIEW OF RULES**

2842.1 The Chief Administrative Law Judge shall review these Rules within thirty-six (36) months of their final promulgation, and, in his or her discretion, shall issue revised rules for public comment and promulgation after the review.

## **2843-2898. RESERVED**

## **2899 GENERAL DEFINITIONS**

For the purposes of this Chapter the term:

“Act” means the Office of Administrative Hearings Establishment Act of 2001, D.C. Official Code §§ 2-1831.01 *et seq.*

“Adjudicated case or matter” means a contested case or other administrative adjudicative proceeding before the Mayor or any agency that results in a final disposition by order and in which the legal rights, duties, or privileges of specific parties are required by any law or constitutional provision to be determined after an adjudicative hearing of any type. The term “adjudicated case” includes, without limitation, any required administrative adjudicative proceeding arising from a charge by an agency that a person committed an offense or infraction that is civil in nature.

“Administrative court” or “OAH” means the Office of Administrative Hearings as established pursuant to the Act.

“Administrative Law Judge,” unless otherwise specified, means an administrative law judge of the Office of Administrative Hearings acting under authority of the Act and other applicable law.

“Administrative Procedure Act” means D.C. Official Code §§ 2-501 et seq.

“Administrative rule” shall have the meaning provided in D.C. Official Code § 2-502(6).

“Agency” shall have the meaning provided that term in D.C. Official Code § 2-502(3).

“Appellate Proceeding” means any case in which any applicable law grants jurisdiction to this administrative court to review a decision made by another tribunal after an opportunity for an evidentiary hearing in that tribunal.

“Authorized representative” means an attorney who is an active member in good standing of the District of Columbia bar, or, when permitted by applicable law, an individual designated by a party to represent the party.

“Business day” means any day on which this administrative court is open for usual operations, and that is not a Saturday, Sunday, legal holiday or inaccessible day.

“Chief Administrative Law Judge” means the Chief Administrative Law Judge of OAH as authorized by Section 7 of the Act, or any person serving as Acting Chief Administrative Law Judge or interim Chief Administrative Law Judge of OAH.

“Clerk” or “Clerk of Court” means the Clerk of the Office of Administrative Hearings or authorized designee.

“Contested case” shall have the meaning provided that term in D.C. Official Code § 2-502(8).

“Day” means calendar day, unless otherwise specified.

“District of Columbia” means any agency, department, commission, and instrumentality of the District of Columbia government, but does not include the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

“Filed” means, unless otherwise specified, when the document is actually received by the Clerk of Court.

“Government” means the District of Columbia, or any governmental agency authorized by law to prosecute cases before this administrative court and whose administrative litigation falls under the jurisdiction of OAH, but does not include OAH.

“Inaccessible day” means any day on which inclement weather or other conditions have resulted in the closing of this administrative court, or when the Mayor has closed the District of Columbia government or has publicly announced an unscheduled leave policy for the District of Columbia government due to inclement weather or other conditions.

“Individual” means a natural person.

“Interlocutory order” means any decision of an Administrative Law Judge in a matter other than an order as defined in the Act.

“Legal holiday” means New Year’s Day, Birthday of Dr. Martin Luther King, Jr., President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day designated as a legal holiday by the President of the United States, Congress, the Mayor or the Council of the District of Columbia.

“Notice of Infraction” means the charging document issued by the Government pursuant to the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 et seq.

“Notice of Violation” means the charging document issued by the Government pursuant to the Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801 et seq.

“Official record” means the record of proceedings created and maintained by this administrative court.

“Order” shall have the meaning provided that term in D.C. Official Code § 2-502(11).

“Paper” means orders, pleadings, motions, exhibits or any other non-electronic document in any adjudicated case.

“Party” shall have the meaning provided that term in D.C. Official Code § 2-502(10).

“Petitioner” means the party presenting a request for relief or other action from this administrative court.

“Pleading” means a paper in which a party to a proceeding before this administrative court sets forth or responds to allegations, claims, denials or defenses.

“Presiding Administrative Law Judge” or “Presiding Judge” means an Administrative Law Judge who presides in a particular matter. It is not used in these Rules to refer to any category of Administrative Law Judges with specified management or administrative responsibilities

“Proceeding” means a trial, hearing or other matter related to an adjudicated case before this administrative court.

“Request for hearing” means, unless otherwise specified, an oral or written request for a formal examination by this administrative court of issues of law and fact between parties and includes, but is not limited to, appeals from initial determinations of unemployment compensation claims as well as Rental Accommodation and Conversion Division petitions for hearings.

“Respondent” means the party answering the petitioner’s request for relief or other action from this administrative court.

“Rule” or “Rules” means the rules of practice and procedure set forth in Chapters 28 and 29 of this Title.

“Third party commercial carrier” means a carrier that is in the business of regularly accepting and delivering papers, such as Federal Express or the United Parcel Service.

“Trial” or “hearing” means a formal examination by this administrative court of issues of law and fact between parties, which may involve the offering of sworn testimony or documentary or photographic evidence.

Comments on these proposed regulations should be submitted, in writing, to Mr. Tracy J. BeMent, Acting Chief Administrative Officer, Office of Administrative Hearings, 825 North Capitol Street, N.E., Suite 4150, Washington, D.C. 20002, within thirty (30) days of the date of publication of this notice in the D.C. Register. Copies of these proposed regulations are available without charge from the above address.